

SETH HERNANDEZ,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 90-132-A
ACTING ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	January 23, 1991

Appellant Seth Hernandez seeks review of a June 28, 1990, decision of the Acting Aberdeen Area Director, Bureau of Indian Affairs, denying his application for a U.S. direct loan to begin a concrete and sand and gravel hauling business on the Pine Ridge Reservation.

The Acting Area Director's decision states at page 1:

The reasons for denial are as follows: There is no letter of commitment for the \$200,000 from the Catholic Church Organization. Your application discusses a U.S. Direct Loan and a BIA Grant for the same proposal. This is not allowed. Your proposed budget indicates a need of \$1,159,131.00, however, you state you only need \$466,000.00 in financing. There are no cash flow or pro forma statements. These are required monthly for the first year and annually for the next two years. You also discuss a potential loan from the State of South Dakota REDI Fund. Has this loan been approved? There is no personal financial statement attached. You indicate that your sales will almost double in the second year of operation. There is nothing to verify these figures. There is insufficient collateral to secure a loan of this size. According to the financial statement, you allowed \$42,000 in annual debt service. There is no loan repayment schedule. This is important to determine project feasibility and ability to repay loans. Finally, there is no indication of where your 20% equity injection in this project will come from. Equity can be in the form of cash or unencumbered assets.

Appellant's notice of appeal to the Board states in its entirety:

I plan to resubmit my application with corrections. My cash flow projections for the business [were] incomplete. You will note there are cash flows available. The cash flows will be redone on a chart. The Commitment will be submitted. Mr. Art Hacker, Area Loan Specialist, suggested that I complete my cash flow projections along with a few other minor corrections.

After receiving the administrative record, on August 31, 1990, the Board issued a notice of docketing informing the parties of their right to file briefs. Appellant did not file a brief or other statement in support of his appeal. Neither did he file with the Board any of the additional information mentioned in his notice of appeal. Therefore, by order dated November 21, 1990, the Board stayed proceedings before it pending a report from the Area Director as to whether appellant had submitted an amended application to the Area Office. By letter of January 3, 1991, the Area Director advised the Board that appellant had not submitted any additional information and that the status of the application before him remained unchanged. Appellant made no filing with the Board in response to the November 21, 1990, order.

In appeals arising under 25 CFR Part 2, the appellant bears the burden of proving that the agency decision complained of was erroneous or not supported by substantial evidence. See, e.g., Kays v. Acting Muskogee Area Director, 18 IBIA 431 (1990), and cases cited therein. In this case, the notice of appeal does not set forth any grounds for the appeal, and appellant has not filed a brief indicating those grounds. Because he has not given any reasons for the appeal, or attempted to show the error in the Area Director's decision, appellant cannot sustain his burden of proof.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the June 28, 1990, decision of the Acting Aberdeen Area Director is affirmed.

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge